

1 LAW OFFICES OF BYRON THOMAS
2 BYRON E. THOMAS, ESQ.
3 Nevada Bar No. 8906
4 3275 S. Jones Blvd., Suite 104
5 Las Vegas, NV 89146
6 Telephone No. (702) 347-3103
7 Email: byronthomaslaw@gmail.com
8 *Counsel for Debtor*

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

Case No.: 21-11506-ABL
Chapter: 7

IN RE :

EMPIRE POST MEDIA

Hearing Date: July 7, 2021
Hearing Time: 9:30 a.m.

**OPPOSITION TO SAEAN, INC.'S
MOTION TO DISMISS
BANKRUPTCY**

Comes now Empire Post Media, Inc., by and through its counsel of record and files this Opposition to Motion to Saeon' Motion to Lift the Bankruptcy (the "Opposition"). The Opposition is based on the pleadings and papers on file and the oral argument ordered by the Court.

POINTS AND AUTHORITIES

Background Facts¹

The controlling shareholder of Empire Post Media, Inc., a Nevada corporation ("EMPM" or the "Company") was and is Saeon, Inc., a Nevada corporation ("Saeon").

In the Summer of 2019, as majority shareholder, Saeon approved the proposed EMPM business plan of developing an off-road, electric vehicle business.

Contemporaneously, Saeon and Mr. Lee then installed the then current management team in the Summer of 2019 and executed a convertible promissory note in the amount of \$905,000 USD contemporaneously (the "Note") to develop the approved business plan.

1 Saeon initially funded \$305,000 USD of the \$905,000 Note in August of 2019 (the
2 “Initial Funding”), with the balance of \$605,000 USD to be received by EMPM from Saen
3 during October 2019.

4 With the Initial Funding, EMPM and its management team entered into a long-term
5 sublease on a large commercial building (approximately 10,000 square feet with showroom),
6 purchased significant equipment and tools, hired employees and staff to further the business
7 plan, and had completed initial development of an off-road electric prototype by December
8 2019.
9

10 Mr. John Lee visited the EMPM facility two times during the fall of 2019 and told the
11 management team he approved all corporate actions by EMPM to date and made the first of
12 many promises that the final investment of \$605,000 USD would be sent in no later than
13 December 2019.

14 In a last-ditch effort to obtain the promised remaining financing from the Note signed by
15 Saeon, Mr. William Sawyer and Ms. Tammy Billington (both then officers of EMPM) took a
16 trip to visit Saeon and Mr. Lee in South Korea during the holiday season of late December
17 2019 and January 2020.
18

19 This trip to South Korea was completed to impress upon Saeon and Mr. Lee the dire
20 circumstances that EMPM was in financially going into the new year of 2020 in a desperate
21 attempt to get the final funding of \$605,000 USD on the Note as creditors, including the
22 EMPM’s commercial landlords, were threatening legal action for rents due on the large
23 facility that had been leased based upon promised funding of the Note by Saeon and Mr. Lee.
24

25 During this trip to South Korea as discussed above, Saeon and Mr. Lee made further
26 promises of meeting Saeon’s funding obligations under the Note.
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¹ The Background facts are supported by the Declaration of Ted Campbell filed concurrently with this Motion.

1 During the first quarter of 2020, Saeen and Mr. Lee continued to make the same promises
2 of completing the funding of the Note until the management team had no choice but to file a
3 lawsuit against Saeen due to its financial predicament caused by Saeen's failure to complete
4 the funding of the Note.

5 The lawsuit against Saeen was filed on April 12, 2020, in direct response to EMPM being
6 threatened with legal actions by its creditors, and the fact we no longer believed that Saeen,
7 EMPM's largest shareholder, would complete the funding of the Note as contractually
8 obligated to do so.
9

10 It is important to note that at no time before April 12, 2020, did Saen, Mr. Lee, or any
11 other representative of the same send a letter or email to EMPM or its current management
12 alleging mismanagement of the Initial Funding by the current management team of EMPM.

13 This mismanagement of funds statement by the current management team, expressed now
14 in many filings by Saeen with this court, is a convenient defense to the breach of the terms of
15 the Note by Saeen.
16

17 Again, Mr. Lee, the CEO of debtor Saeen, again took two trips to the facility in the fall of
18 2019 and at such times, expressed his enthusiasm with what had been accomplished to date
19 and pushed the management team forward with additional spending requests and the
20 numerous broken promises that the remaining \$605,000 USD of the Note due to EMPM
21 would be invested shortly.

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ARGUMENT

A. The Bylaws and Articles Empowered Mr. Campbell to put the Company Into Bankruptcy.

Debtor does not disagree that only an authorized person can put a company in to bankruptcy and that is governed by applicable bankruptcy. Mr. Campbell did have the authority to put the Debtor into bankruptcy under state law. See Exhibit “A.”

On March 26, 2021, Ted Campbell as secretary of Empire Post placed the Company into bankruptcy. See Exhibit “B”. Mr. Campbell was authorized to put the Company into bankruptcy pursuant to the Company’s bylaws and articles.

Section 3.1 of the Bylaws states as follows:

Powers – the business of the corporation shall be managed by its Board of Directors which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Articles of Incorporation or by these Bylaws directed or required to be exercised or done by stockholders.

See Exhibit “A.” There is absolutely nothing in the Articles of Incorporation that requires a shareholder vote on whether the Company can be put in bankruptcy or not. Id. There is nothing in the statutes that require the Company to get shareholder approval of a bankruptcy filing. Saen, Inc., does not cite one statute, bylaw or article of incorporation that requires a shareholder vote before putting Debtor into bankruptcy.

For some inexplicable reason Saen points to NRS 78.135(1) as preventing Mr. Campbell from putting the Company into bankruptcy. NRS 78.135(1) provides in relevant part as follows:

1. The statement in the articles of incorporation of the objects, purposes, powers and authorized business of the corporation constitutes, as between the corporation and its directors, officers or stockholders, an authorization to the directors and a limitation upon the actual authority of the representatives of the corporation.

1 NRS 78.135 simply says that the Court should look to the Articles for Limitations on the
 2 Powers of the Board. The Articles of Incorporation do not contain any limitations on the
 3 officer's ability to place the Company into bankruptcy. Saen then cites to NRS 78.139, is
 4 applicable however this simply makes no sense. In the State Court action Saen filed a
 5 counterclaim and alleged:

6 As Empire is admittedly in a dire financial position, and essentially
 7 insolvent, Empire should be dissolved judicially and any assets and
 8 liabilities of Empire, including funds provided by Saen, should be
 accounted for and any creditors' claims satisfied.

9 Dkt # 32-1 p. 12, ¶ 18. Saen is claiming that the Debtor is insolvent and creditors need to be
 10 protected. This is exactly what the Bankruptcy code is setup to do. Then the alternative
 11 Saen asserts

12 In the alternative, should this Court not dissolve Empire, a receiver should
 13 be appointed to manage Empire, and report on Empire operational and
 14 financial condition; so further orders and adjudication of this Court may
 15 issue.

16 Id. at ¶ 21. A receiver is entitled to compensation as are the professionals that he/she
 17 employs. Saen, Inc. has made no offer to pay for the fees and costs.

18 NRS 78.140 governs transactions between a corporation and officers and directors of
 19 that corporation. There is no contract or transaction between the corporation and any officer
 20 at issue in this instance. NRS 78.140 is simply not applicable.

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CONCLUSION

The debtor was properly placed into bankruptcy. There was no requirement for a shareholder vote to put the Company in Bankruptcy

Dated this 23th Day of June 2021

LAW OFFICES OF BYRON THOMAS

By: /s/ BYRON E. THOMAS, ESQ.

BYRON THOMAS
3275 S. Jones Blvd
Las Vegas, Nevada 89146
Phone: (702) 747-3103
Attorneys for Debtor